

Part 6

Indigent Capital Defense Trust Fund

77-32-601 Establishment of Indigent Aggravated Murder Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

- (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund.
- (2)
 - (a) There is established a private-purpose trust fund known as the "Indigent Aggravated Murder Defense Trust Fund."
 - (b) The fund shall be disbursed by the Division of Finance at the direction of the board and subject to this chapter.
- (3) The fund consists of:
 - (a) money received from participating counties as provided in Sections 77-32-602 and 77-32-603;
 - (b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and
 - (c) interest and earnings from the investment of fund money.
- (4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.
- (5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving aggravated murder.
- (6) Money allocated to or deposited in this fund shall be used only:
 - (a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for aggravated murder in a participating county; and
 - (b) for administrative costs pursuant to Section 77-32-401.

Amended by Chapter 303, 2011 General Session

77-32-602 County participation.

- (1)
 - (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.
 - (b) The board may revoke a county's participation in the fund if the county fails to pay its assessments when due.
- (2) To participate in the fund, the legislative body of a county shall:
 - (a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 77-32-603; and
 - (b) submit a certified copy of that resolution together with an application to the board.
- (3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-603.
- (4) Any participating county may withdraw from participation in the fund upon:
 - (a) adoption by its legislative body of a resolution to withdraw; and
 - (b) notice to the board by January 1 of the year prior to withdrawal.
- (5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

- (a) any previously payed assessment;
- (b) relief from its obligation to pay its assessment during the period of its participation in the fund;
and
- (c) any benefit from the fund, including reimbursement of costs which accrued after the last day of the period for which the county has paid its assessment.

Amended by Chapter 333, 1998 General Session

77-32-603 County and state obligations.

- (1)
 - (a) Except as provided in Subsection (1)(b), each participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located with that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.
 - (b) The fund minimum shall be equal to or greater than 50 cents per person of all counties participating.
 - (c) The amount paid by the participating county pursuant to Subsection (1) shall be the total county obligation for payment of costs pursuant to Section 77-32-601.
- (2)
 - (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment in addition to the assessment provided in Subsection (1).
 - (b) The equity payment shall be determined by the board and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.
- (3) If the fund balance after contribution by the state and participating counties is insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote may terminate the fund.
- (4) If the fund is terminated, all remaining funds shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.
- (5)
 - (a) If the fund runs a deficit during any calendar year, the state is responsible for the deficit.
 - (b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.
- (6) In any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session. The state shall pay any or all of the reasonable and necessary money for the deficit into the Indigent Capital Defense Trust Fund.

Amended by Chapter 333, 1998 General Session

77-32-604 Application and qualification for fund money.

- (1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital felonies in violation of state law arising out of a single criminal episode.
- (2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.
- (3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.
- (4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.
- (5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Amended by Chapter 209, 2001 General Session